

## Comptroller of the Currency, Treasury

## § 150.200

(4) The ability of a Federal savings association conducting fiduciary activities to maintain an action or proceeding in state court; and

(5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;

(2) Real property law;

(3) Tort law;

(4) Criminal law;

(5) Probate law; and

(6) Any other law that the OCC, upon review, finds:

(i) Furthers a vital state interest; and

(ii) Either has only an incidental effect on fiduciary operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

### **§ 150.140 Must I adopt and follow written policies and procedures in exercising fiduciary powers?**

You must adopt and follow written policies and procedures adequate to maintain your fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the following areas:

(a) Your brokerage placement practices.

(b) Your methods for ensuring that your fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(c) Your methods for preventing self-dealing and conflicts of interest.

(d) Your selection and retention of legal counsel who is ready and available to advise you and your fiduciary officers and employees on fiduciary matters.

(e) Your investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

## FIDUCIARY PERSONNEL AND FACILITIES

### **§ 150.150 Who is responsible for the exercise of fiduciary powers?**

The exercise of your fiduciary powers must be managed by or under the direction of your board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee of directors, officers, or employees.

### **§ 150.160 What personnel and facilities may I use to perform fiduciary services?**

You may use your qualified personnel and facilities or an affiliate's qualified personnel and facilities to perform services related to the exercise of fiduciary powers.

### **§ 150.170 May my other departments or affiliates use fiduciary personnel and facilities to perform other services?**

Your other departments or affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

### **§ 150.180 May I perform fiduciary services for, or purchase fiduciary services from, another association or entity?**

You may perform services related to the exercise of fiduciary powers for another association or other entity under a written agreement. You may also purchase services related to the exercise of fiduciary powers from another association or other entity under a written agreement.

### **§ 150.190 Must fiduciary officers and employees be bonded?**

You must obtain an adequate bond for all fiduciary officers and employees.

## REVIEW OF A FIDUCIARY ACCOUNT

### **§ 150.200 Must I review a prospective account before I accept it?**

Before accepting a prospective fiduciary account, you must review it to

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determine whether you can properly administer the account.

### **§ 150.210 Must I conduct another review of an account after I accept it?**

After you accept a fiduciary account for which you have investment discretion, you must conduct a prompt review of all assets of the account to evaluate whether they are appropriate, individually and collectively, for the account.

### **§ 150.220 Are any other account reviews required?**

At least once every calendar year, you must conduct a review of all assets of each fiduciary account for which you have investment discretion. In this review, you must evaluate whether the assets are appropriate, individually and collectively, for the account.

#### CUSTODY AND CONTROL OF ASSETS

### **§ 150.230 Who must maintain custody or control of assets in a fiduciary account?**

You must place assets of fiduciary accounts in the joint custody or control of not fewer than two fiduciary officers or employees designated for that purpose by the board of directors.

### **§ 150.240 May I hold investments of a fiduciary account off-premises?**

You may hold the investments of a fiduciary account off-premises, if this practice is consistent with applicable law, and you maintain adequate safeguards and controls.

### **§ 150.250 Must I keep fiduciary assets separate from other assets?**

You must keep the assets of fiduciary accounts separate from your other assets. You must also keep the assets of each fiduciary account separate from all other accounts, or you must identify the investments as the property of a particular account, except as provided in § 150.260.

## 12 CFR Ch. I (1–1–14 Edition)

### INVESTING FUNDS OF A FIDUCIARY ACCOUNT

### **§ 150.260 How may I invest funds of a fiduciary account?**

(a) *General.* You must invest funds of a fiduciary account in a manner consistent with applicable law.

(b) *Collective investment funds.* (1) You may invest funds of a fiduciary account in a collective investment fund, including a collective investment fund that you have established. In establishing and administering such funds, you must comply with 12 CFR 9.18.

(2) If you must file a document with the OCC under 12 CFR 9.18, the OCC may review such documents for compliance with this part and other laws and regulations.

(3) “Bank” and “national bank” as used in 12 CFR 9.18 shall be deemed to include a Federal savings association.

### FUNDS AWAITING INVESTMENT OR DISTRIBUTION

### **§ 150.290 What must I do with fiduciary funds awaiting investment or distribution?**

If you have investment discretion or discretion over distributions for a fiduciary account which contains funds awaiting investment or distribution, you must ensure that those funds do not remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. You also must obtain a rate of return for those funds that is consistent with applicable law.

### **§ 150.300 Where may I deposit fiduciary funds awaiting investment or distribution?**

(a) *Self deposits.* You may deposit funds of a fiduciary account that are awaiting investment or distribution in your other departments, unless prohibited by applicable law.

(b) *Affiliate deposits.* You may also deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law.